IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 24 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAJENDRA CORPORATION

Appearance:

MR AKIL KURESHI for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court, at the instance of the revenue :

"Whether on the facts and in the circumstances of the case and having regard to the provisions of the trust deed dated 2.7.1977 and the release deed dated 7.10.1980 the trust can be treated as discretionary trust liable to be assessed at the maximum marginal rate under section 164 of the Income-tax Act, 1961 ?"

2. We have heard Mr.Akil Kureshi appearing on behalf of the applicant-revenue. Though served, none appears on behalf of the respondent-assessee.

3. It was fairly pointed by Mr.Kureshi that the question referred to us has already been decided by this Court in assessee's own case for an earlier assessment year by decision dated 28th August, 2001 in Income-tax Reference No.130 of 1987. Furthermore, the said decision has recently been followed in Income-tax Reference No.65 of 1991 on 16th October, 2001.

4. Following the aforesaid decision in assessee's own case, we hold that the Tribunal was right in law in holding that the trust which was determinate as per terms of trust deed dated 2nd July, 1977 did not loose its character by virtue of release deed dated 7th October, 1980, and hence, the trust could not be treated as discretionary trust liable to be assessed at the maximum marginal rate under section 164 of the Income-tax Act, 1961.

The question referred to us therefore answered in the negative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta, J)

'Bhavesh'